

ORIGINAL

DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

)
)
)
)
)
)

MM Docket No. 87-268

RECEIVED

To: The Commission

JUN 13 1997

Federal Communications Commission
Office of Secretary

PETITION FOR RECONSIDERATION

This petition is filed by the Brechner family, which owns Delmarva Broadcast Service General Partnership (licensee of station WMDT-TV, Channel 47, Salisbury, Maryland) and Northeast Kansas Broadcast Service, Inc. (licensee of station KTKA-TV, Channel 49, Topeka, Kansas). The Commission's *Sixth Report and Order* could have the effect of imposing a frequency assignment "double move" requirement on both of the Brechner family's stations. This could cause hardship to the family's stations, and we are therefore requesting limited reconsideration of this aspect of the Commission's decision.

The Brechner family has great respect and admiration for the manner in which the Commission has thus far tackled the difficult task of working out an acceptable transition from analog to digital broadcasting. Overall, we concur with the Commission's actions and are prepared to cope with the difficulties the transition is likely to cause our two smaller market stations. Were it not for one particular problem -- the anticipated "double move" problem -- we would not be filing this petition.

No. of Copies rec'd
List A B C D E

0+9

The Commission has not yet decided what the final "core" spectrum for digital television will be. The *Sixth Report and Order* indicates the ultimate core spectrum may be Channels 2 through 46, or it may be Channels 7 through 51. Our Topeka station operates on Channel 49 and has been assigned DTV Channel 48. Our Salisbury station operates on Channel 47 and has been assigned DTV Channel 53. If the core spectrum ultimately turns out to be Channels 2 through 46, then, for both of our stations, neither the present NTSC channel nor the newly assigned DTV channel will remain in the "core." Thus, at some future time (2006 is presently projected as the "cut-off" year), and after our stations have operated for many years on their current NTSC channels and for a number of years on their new DTV channels, none of these prior channels would remain available, and both of our stations would be required to migrate to yet another new channel on which they had never previously operated.

We understand from the National Association of Broadcasters that such a "double move" requirement could affect as many as 89 current television stations. This would mean that slightly over five percent of all stations could be adversely affected by such a requirement. Both economically and technically, the dislocations entailed in a transition from NTSC to DTV transmission will be a challenge for television broadcasters. This additional and unanticipated "double move" requirement will pose an additional hardship for stations required to make such a second move, and particularly for stations -- such as the Brechner family's two stations -- that operate in smaller television markets.

The "double move" requirement will involve additional engineering and legal expenses due to the need to evaluate and settle on the ultimate DTV channel to be used by affected stations. It will entail another round of potential modifications to (or possibly replacement of) station transmitters,

transmission lines and antenna. Most important of all, in our view, the "double move" requirement will involve significant losses in viewership, competitive position, advertising revenues and the "goodwill" that derives from the identification of a station with its channel number in the minds of viewers.

Such a second move, while unlikely to be as expensive in terms of equipment costs as the initial conversion to DTV, could easily cost a station millions of dollars in technical, legal and equipment costs, and in its destabilizing effects on viewers and revenues. Unlike the initial conversion to DTV, the second move requirement is likely to affect only one station in a market -- and thus to have a substantial adverse effect on the affected station, as compared to its competitors. It also is not known whether additional problems will arise with respect to cable retransmission of stations forced to undergo a second move. The Brechner family stations are presently carried to viewers from roughly fifty cable headends, and a second move would presumably require changes to the digital converter equipment utilized at each of these cable headends. Affected stations could well be asked to bear the costs of such changes to cable retransmission equipment, which could add yet another substantial financial burden to these already disadvantaged stations.

The hardship of this situation will be especially severe for the Brechner family's small broadcast companies, which own only two stations in smaller markets -- both of which will potentially be affected by a "double move" requirement.

Because of the uncertainty at this time as to which channel block will ultimately be chosen as the "core" DTV spectrum, as well as the current limitations on the ability of broadcast consulting engineers to assess DTV coverage and interference issues without final standards in place, it appears unwise -- and probably impossible -- for the Brechner family to attempt to select or propose an

alternative DTV channel for either of its stations that would remain within the "core" under both of the current proposals for the future core DTV spectrum.^{1/} Nevertheless, we have retained a consulting engineer to conduct a preliminary study regarding such a possible alternative channel for each of our stations. We would much prefer to avoid, however, the potential significant legal and engineering costs involved in submitting a petition for rule making to propose alternative channels -- particularly since the "double move" problem could be eliminated for our stations, if Channels 7 through 51 are ultimately selected as the "core." Should that happen, both of the channels assigned to our Topeka station would be within the "core," and at least the current NTSC channel of our Salisbury station would be within the "core."

It is our understanding that substantially more stations will be subject to a "double move" requirement if Channels 2 through 46 are selected as the "core" than will be the case if channels 7 through 51 are selected as the "core." In order to eliminate the unfair economic and competitive damage the "double move" requirement will cause, we would urge that the Commission consider broadening the "core" to include Channels 2 through 53 (or whatever higher channel may be necessary). If the "core" absolutely must be either of the two possibilities the Commission has proposed -- Channels 7 through 51 should be selected as the core spectrum, since this will minimize the number of "double moves" that are required. We would also request that the Commission announce what the core spectrum will be as soon as possible, ideally in response to requests for

^{1/} It may also be unwise to attempt to select a new frequency now, due to the frequency congestion that will exist during the transition phase of dual NTSC and DTV operations. Such congestion greatly limits the available choices of alternate channels and will presumably be alleviated after NTSC frequencies are returned, possibly freeing up a wider selection of alternative DTV channels. However, a channel change at that time would entail the same "double move" hardship that we are seeking to avoid now.

reconsideration such as this one. Knowing now what the core spectrum will be would greatly assist the Brechner family and other similarly-situated broadcasters in attempting to plan for the future of their stations.

An alternative possibility would be for the Commission to identify the situations in which a "double move" will or might be required, and then make such modifications as are necessary or possible to the assignment table (or to the proposed "core" spectrum) so as to eliminate (or, if this is not possible, minimize) the instances in which a "double move" would be required. One possible type of modification that occurs to us might involve identifying those markets where one station is currently assigned both an NTSC and a DTV channel that could fall outside the "core," while one or more other stations are currently assigned an NTSC and a DTV channel that will both definitely fall within the "core" (*i.e.*, that are within the Channel 7 through 46 range). In such a case, it may be possible to "swap" channel assignments, so that both stations have at least one channel assignment within the "core." If the Commission fully appreciated the serious economic and competitive problems a "double move" requirement could cause small market stations such as ours, we are confident it would make every effort to eliminate such a requirement wherever possible.

If the "double move" requirement cannot be eliminated, and if the Brechner family stations ultimately are subject to such a requirement, we would respectfully request the following relief:

(1) We request that we be permitted the right to seek, as a supplement or other further submission in connection with this petition, an alternate channel under the Commission's reconsideration procedures. This request is made because of the uncertainties and technical difficulties that all but preclude the selection of a viable alternate DTV channel at this time, and also due to the special hardship that the Brechner family stations face -- the fact that both of these smaller

market stations are potentially subject to a "double move" requirement. Our consulting engineer has advised us that the cost of preparing and filing a petition for rule making at a later time would be substantially greater, due to the engineering work that would be entailed, and that our choices might also be far more limited than would be the case if a supplemental request is permitted in connection with this petition.

(2) We also request that any stations ultimately required to make a "double move," and particularly smaller market stations such as our own (which are not in the top 100 markets), be granted a channel from which they can provide coverage that at least equals that of each of their competitors, and that such stations be considered for special compensation for the "hard costs" of the double move, as well as any costs such stations may be forced to incur to obtain continued cable carriage after the channel switch and any quantifiable adverse business impact costs that are traceable to the "double move" and are experienced during the first two years after the move. Such compensation could be funded with revenues from the auction of recovered spectrum, and could be limited to those situations in which only one or more stations in a given local market are forced to suffer the competitive disadvantage of a "double move" that is not required of other stations in the market.

In addition to the foregoing, the Brechner family also respectfully requests that the Commission provide any other form of relief that it deems appropriate to stations that are or may be required to submit to a "double move" requirement in connection with DTV implementation.

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Berl Brechner", written over a horizontal line.

Berl Brechner
222 Pasadena Place
Orlando, FL 32803

Date: June 13, 1997